



October 30, 2001

Mr. Doug Lowe  
Criminal District Attorney  
Anderson County  
500 North Church  
Palestine, Texas 75801

OR2001-4970

Dear Mr. Lowe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154101.

The Anderson County District Attorney's Office (the "district attorney") received a request for information relating to an investigation of a murder that occurred at a facility within the Texas Department of Criminal Justice system on March 16, 2000, as well as a Crime Victim's packet. You inform us that the Crime Victim's packet is being provided to the requestor, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that the information is excepted under section 552.101 in conjunction with section 551.076 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 551.076 exempts a governmental body from the requirement of holding an open meeting, when the subject deliberated is "the deployment, or specific occasions for implementation, of security personnel or devices." Gov't Code § 551.076. Records of such meetings must be kept in the form of a tape recording or certified agenda. Gov't Code § 551.103. These records are available for public inspection only under court order. Gov't Code § 551.104(c). However, the fact that a subject was discussed in an executive meeting does not make information related to that discussion confidential. Open Records Decision No. 485 (1987). Thus, we conclude that section 551.076 is not a confidentiality provision that makes the submitted information confidential. Therefore, you may not withhold the submitted information under section 552.101 of the Government Code.

Next, we note that the submitted information includes an autopsy report, which we have marked. Section 11 of article 49.25 of the Code of Criminal Procedure governs this information, and provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, we conclude that the autopsy report is a public record and must be released.<sup>1</sup>

We further advise that a portion of the information, which we have marked, is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). As the patient is deceased, the medical records may be released only on the signed consent of the deceased's personal representative.

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<sup>1</sup>The submitted autopsy report does not include photographs or x-rays. Thus, we do not address such information.

Occ. Code §§ 159.005(a)(5). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.*; Occ. Code §§ 159.002, .004; *see also* Open Records Decision No. 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). The information we have marked as subject to the MPA may be released only in accordance with that statute.

In addition, we note that included in the submitted information is a custodial death report. In Open Records Decision No. 521 at 5 (1989), this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the Office of the Attorney General, section one of a custodial death report filed with this office is public information, but sections two through five of the report, as well as attachments to the report, are confidential. *See* Code Crim. Proc. art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). Thus, section one of the custodial death report is not confidential under section 552.108. The district attorney must release section one of the custodial death report to the requestor. However, because sections two through five of the report and attachments thereto are deemed confidential under article 49.18(b), the department must not release the remaining portions of the custodial death report.

Finally, for the remaining information, we address your section 552.108 assertion. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the remaining submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page

offense report information, even if this information is not actually located on the front page of the offense report.

In this regard, we note your argument that "front-page" offense report information should not be released in this case. We have addressed several special situations in which front page offense report information may be withheld from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983); *see also* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976). Based upon the information provided to this office, however, we do not believe that you have shown special circumstances sufficient to overcome the presumption of public access to basic information. Therefore, the basic information contained in the submitted documents may not be withheld under section 552.108.

Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007. Based on this finding, we need not reach your section 552.103 assertion, except to note that basic information that is not excepted from disclosure under section 552.108 also may not generally be withheld under section 552.103. Open Records Decision Nos. 597 (1991), 362 (1983).

To summarize, we conclude that pursuant to article 49.25, section 11 of the Code of Criminal Procedure, the autopsy report is a public record and must be released. The district attorney must also release section one of the custodial death report to the requestor. Medical records may only be released in accordance with the MPA. The remainder of the submitted information may be withheld pursuant to section 552.108(a)(1), with the exception of basic information, which must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 154101

Enc. Submitted documents

c: Mr. Jay Wright  
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(w/o enclosures)